

Message Text

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ORIGIN EB-07

INFO OCT-01 EA-07 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 FEA-01 AID-05 CEQ-01

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EPA - JSCHETTINO

L/EB - PMICKEY EA/J:DFSMITH

DOT/OST:JFLYNN (INFO)

DOT/OST-PLARSEN

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

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TAGS: EAIR, JA, SENV

SUBJECT: CIVAIR - JAPANESE NOISE LEVY; BILATERAL TALKS

REF : TOKYO 1406, TOKYO 12240, STATE 32432

1. GOJ RESPONSE TO AIRLINE COMPLAINT IN NOISE LEVY
CASE APPEARS TO UNDERMINE JAPANESE ARGUMENTS IN THEIR
DISCUSSIONS WITH US. BASIC POINT IS THAT JAPANESE SEEM
TO RELY ON LAUNDERING NOISE LEVY THROUGH COUNTRY-WIDE
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AIRPORT MAINTENANCE ACCOUNT TO JUSTIFY IGNORING BOTH

RELATIONSHIP OF COSTS AND CHARGES AND CROSS-SUBSIDIZATION WHICH WILL OCCUR. UNLESS EMBASSY SEES OBJECTION, PLEASE SUBMIT FOLLOWING NOTE, IF POSSIBLE IN TIME FOR PERUSAL BEFORE JAPANESE DEL DEPARTS FOR MAY 19 TALKS IN WASHINGTON:

2. QUOTE: ...AND HAS THE HONOR TO REFER TO ITS NOTE OF JULY 25, 1975, AND ITS AIDE MEMOIRES OF SEPTEMBER 30, 1975, AND JANUARY 29, 1976, ALL REGARDING THE SPECIAL LANDING CHARGE.

THE GOVERNMENT OF THE UNITED STATES HAS RECENTLY COME INTO POSSESSION OF THE RESPONSE OF THE GOVERNMENT OF JAPAN TO THE COMPLAINT OF THE AIRLINES IN A JAPANESE COURT AGAINST THE SPECIAL LANDING CHARGE, AND THAT RESPONSE HAS REINFORCED THE U.S. GOVERNMENT'S OWN CONCERNS WITH RESPECT TO THIS LANDING CHARGE.

PERHAPS MOST PERPLEXING IS THE STATEMENT IN THE RESPONSE THAT "PROMOTION OF SUCH (NOISE ABATEMENT) MEASURES BY A SPECIAL ACCOUNT FINANCED BYFEES FOR THE USE OF OTHER AIRPORTS IS (NOT) PROHIBITED." THIS APPEARS TO CONTRADICT THE ASSURANCES PREVIOUSLY GIVEN THE EMBASSY THAT THERE WOULD BE NO CROSS-SUBSIDIZATION FROM ONE AIRPORT TO ANOTHER. THE UNITED STATES CANNOT ACCEPT THE VIEW THAT PASSING THESE CHARGES THROUGH A COUNTRY-WIDE ACCOUNT IN ITSELF ELIMINATES ANY CROSS-SUBSIDIZATION.

ALSO VERY TROUBLESOME IS THE STATEMENT THAT "THERE IS NO DIRECT RELATIONSHIP BETWEEN ITEMS OF INCOME AND EXPENDITURE". IT IS THE FIRMLY HELD VIEW OF THE GOVERNMENT OF THE UNITED STATES THAT CHARGES FOR AIRPORT LANDINGS MUST NOT SUBSTANTIALLY EXCEED 100 PERCENT OF THE COSTS OF PROVIDING AIRPORT LANDING SERVICES. AS MENTIONED IN THE EMBASSY'S AIDE-MEMOIRE OF JANUARY 29, IT IS ALSO CLEARLY INEQUITABLE TO REQUIRE OPERATORS OF CERTAIN AIRCRAFT TO PAY FOR MEASURES AND FACILITIES THAT THEIR AIRCRAFT DO NOT REQUIRE.

THE EMBASSY WOULD GREATLY APPRECIATE AN EXPLANATION OF LIMITED OFFICIAL USE

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THESE TWO POINTS, AND A FULL RESPONSE TO ITS JANUARY AIDE-MEMOIRE. UNQUOTE.

3. IN DISCUSSION WITH FUJII, YOU SHOULD POINT OUT THAT IF SPECIAL LANDING CHARGE IS CHARGE FOR USE OF AIRPORT PROPERTY, AS JAPANESE CLAIM, AND JAPANESE ARE RECOVERING SUBSTANTIALLY MORE THAN 100 PERCENT OF COST FROM U.S. CARRIERS, JAL COULD BE SUBJECTED TO COMPENSATORY CHARGES

UNDER FAIR COMPETITIVE PRACTICES ACT, WHICH PROVIDES FOR SUCH COMPENSATION WHEN CHARGES ABROAD "UNREASONABLY EXCEED" THOSE IN U.S. ACT ALSO PROVIDES THAT COMPENSATORY CHARGES SHALL BE IMPOSED IF A FOREIGN COUNTRY DISCRIMINATES AGAINST U.S. CARRIERS, AND RECOVERING A SIGNIFICANTLY GREATER PERCENTAGE OF COSTS FROM THEM THAN FROM OTHER INTERNATIONAL CARRIERS (WITH RESPECT TO THEIR INTERNATIONAL SERVICES) APPEARS DISCRIMINATORY ON ITS FACE.

4. ALSO POINT OUT TO FUJII, WHO RAISED ITEM IN HONOLULU DISCUSSIONS, THAT IT IS OUR INFORMATION THAT HAMMARSKJOLD'S URGING THAT NOISE LEVY BE INCLUDED AS PART OF REGULAR LANDING CHARGE WAS SIMPLY AN ATTEMPT TO KEEP PROBLEM SMALL ENOUGH THAT QUESTION OF PRINCIPLE WOULD NOT HAVE TO BE RAISED. U.S. AIRLINES DENY THAT

IT IN ANY WAY COMMITTED AIRLINES TO ACCEPT SPECIAL LANDING CHARGE AS USER CHARGE.

5. ON SEPARATE BUT RELATED MATTER, DEPT HOPES FUJII WILL ATTEND MAY 19-21 CIVAIR TALKS IN WASHINGTON, AS HE DID EARLIER ROUND IN HONOLULU. SINCE FONOFF WILL BE CLOSELY INVOLVED IN MATTER, PARTICULARLY AS IT DEVELOPS INTO FORMAL NEGOTIATIONS, WE BELIEVE IT IS USEFUL FOR PERSON SUCH AS FUJII TO HEAR AND PARTICIPATE IN SO-CALLED INFORMAL TALKS WHICH ARE INTENDED, FROM OUR VIEWPOINT AT LEAST, TO DISCUSS BASIC ECONOMIC ASSUMPTIONS AND RELATIONSHIPS WHICH WILL, OF COURSE, FORM BASIS FOR POSITIONS EACH SIDE WILL EVENTUALLY TAKE. THEREFORE, SINCE ACCORDING JAPANESE EMBASSY IT NOT YET DECIDED WHETHER FUJII WILL ATTEND UPCOMING TALKS, DEPT WOULD APPRECIATE EMBASSY ATTEMPTING PERSUADE HIM DO SO.
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6. ALTHOUGH USDEL DOES NOT PLAN DISCUSS NOISE CHARGE IN DETAIL AT UPCOMING TALKS, IT WILL PROBABLY MENTION MATTER AND AGAIN URGE ACCEPTABLE SOLUTION. KISSINGER

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